

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JUSTIN GUY, individually and on
behalf of those similarly situated,

Plaintiff,

v.

Case No. 20-cv-12734-MAG-EAS
HON. MARK A. GOLDSMITH

ABSOPURE WATER COMPANY, LLC
a domestic limited liability company,

Defendant.

**DEFENDANT'S SUPPLEMENT MEMORANDUM IN RESPONSE TO
COURT'S ORDER ON THE JURY'S ROLE RELATIVE TO
THE MOTOR CARRIERS ACT EXEMPTION (DKT. NO. 197)**

NOW COMES Defendant Absopure Water Company. LLC (“Absopure”), by and through its attorneys, CUMMINGS, MCLOREY, DAVIS & ACHO, PLC, by RONALD G. ACHO and MICHAEL O. CUMMINGS, and pursuant to the Court’s direction hereby submits its Supplemental Memorandum On Proposed Jury Instructions for the Motor Carriers Act Exemption.

During trial on December 12, 2023, the Court indicated that there should be questions for the jury regarding the Motor Carriers Act exemption at the level of objective facts. Accordingly, Absopure hereby submits a set of proposed jury questions for the verdict form regarding the MCA exemption:

Do you find from a preponderance of the evidence:

1. When Absopure places orders for products with Mountain Valley, who decides the amounts, types, and weight of products to be delivered?

YES

NO

2. When Absopure places orders for products with Mountain Valley, who decides where those products will be delivered?

ABSOPURE

MOUNTAIN VALLEY

TRUCKING COMPANY (J.B. HUNT OR OTHER)

3. After Absopure places an order for products with Mountain Valley, does Mountain Valley relay to the trucking company when Absopure's order will be ready for pickup?

YES

NO

4. After Absopure places an order for products with Mountain Valley, does Mountain Valley relay the trucking company the weight for the order and the destination for delivery of the order that Absopure told to Mountain Valley?

YES

_____ NO

5. Does Mountain Valley have a contract with J.B. Hunt for J.B. Hunt to provide Mountain Valley with a dedicated fleet of trucks to deliver products to Mountain Valley's customers?

_____ YES

_____ NO

6. Is Mountain Valley required to only use J.B. Hunt as the trucking company to deliver products to its customers.

_____ YES

_____ NO

7. Do other trucking companies besides J.B. Hunt deliver products to Mountain Valley's customers?

_____ YES

_____ NO

8. Has Absopure used another trucking company besides J.B. Hunt to deliver Mountain Valley products from Arkansas to Michigan?

_____ YES

_____ NO

9. Who has the final say on which trucking company will transport Absopure's order of products from Mountain Valley to Absopure?

_____ ABSOPURE

_____ MOUNTAIN VALLEY

_____ THE TRUCKING COMPANY (J.B. HUNT,
WHITELINE, OTHER)

10. Who owns the products that Absopure has ordered from Mountain Valley after those products are loaded onto trucks in Arkansas for delivery to Michigan?

_____ ABSOPURE

_____ MOUNTAIN VALLEY

_____ THE TRUCKING COMPANY

11. Who determines the route from Arkansas to Michigan that the trucks will take when Absopure's order is transported from Arkansas to Michigan?

_____ ABSOPURE

_____ MOUNTAIN VALLEY

_____ THE TRUCKING COMPANY

12. Does Absopure pay for the cost of shipping the products it orders from Mountain Valley?

_____ YES

_____ NO

13. Are the products that Absopure orders from Mountain Valley in Arkansas delivered by Absopure to its customers in Michigan by Absopure Sales and Service Specialists?

_____ YES

_____ NO

14. Does Absopure electronically record the amount and types of all products that it receives in its warehouse from Mountain Valley?

_____ YES

_____ NO

15. Does Absopure track the length of time Mountain Valley products are stored in its warehouse before being delivered to its customers?

_____ YES

_____ NO

16. Does Absopure have a procedure to ensure that the earliest Mountain Valley products received in its warehouse are the first products to be delivered to its customers in Michigan?

_____ YES

_____ NO

17. What is the average amount of time that Mountain Valley products stay in Absopure's warehouse from the time they are received to the time they are delivered to Absopure's customers?

18. Does Absopure electronically record and store the amount and types of all Mountain Valley products that are taken from its warehouse and loaded on to Absopure's trucks for sale to its customers?

YES

NO

19. Does Absopure electronically record all sales of Mountain Valley Products to its customers by means of handheld devices carried by each of its Sales and Service Specialists that electronically record all sales, including the amount and types of products, to Absopure's customers?

YES

NO

20. Does Absopure make decisions on what Mountain Valley products to order based on its projections of customer demand for how much product its customers' will need?

YES

NO

21. How many times did each Plaintiff drive a vehicle weighing 10,000 pounds or less each month on average?

_____ John Aniol

_____ Aaron Armstead

_____ Lucas Belonga

_____ Keith Brown

_____ Dannielle Childs

_____ Justin Guy

_____ Anthony Newkirk

_____ Paul Okimoto

_____ Terry Pemberton

_____ Charles Perry

_____ Ryan Rhodes

_____ David Sujkowski

_____ Tampa Jordan

_____ Kyle Winconeck

Respectfully submitted,

Dated: December 13, 2023

s/ Ronald G. Acho

Ronald G. Acho

/s/ Michael O. Cummings

Michael O. Cummings

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ATTORNEYS FOR DEFENDANT ABSOPURE WATER COMPANY, LLC

LOCAL RULE CERTIFICATION

I, Michael O. Cummings, certify that this document complies with Local Rule 5.1(a), including: double-spaced (except for quoted materials and footnotes); at least one- inch margins on the top, sides, and bottom; consecutive page numbering; and type size of all text and footnotes that is no smaller than 10-1/2 characters per inch (for non-proportional fonts) or 14 point (for proportional fonts). I also certify that it is the appropriate length. Local Rule 7.1(d)(3).

Dated: December 13, 2023

/s/ Michael O. Cummings

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CERTIFICATE OF SERVICE

I hereby certify that on December 13, 2023, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system, which will send notification to all parties of record. I hereby certify that I have mailed by United States Postal Service the paper to the following non-ECF participants: None.

Dated: December 13, 2023

/s/ Michael O. Cummings
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